for or upon the sale of any interest in real estate" shall be *void* unless the same or some memorandum thereof be in writing. Defendant gave plaintiff a promissory note for the amount stated, upon which note action was brought. *Held,* the note was an enforceable promise, the consideration therefor being the moral obligation upon defendant to pay plaintiff his commission. *Bagaef* v. *Prokopik* (1920), 212 Mich. 265.

Under the influence of Lord Mansfield, who was obviously impatient with the common law doctrine of consideration (see, for example, *Pillans* v. *Van Mierop,* 3 Burr.* 1663), there was a marked movement about the middle of the eighteenth century to recognize moral obligation, a species of past consideration, as sufficient consideration to support a promise. See *Watson* v. *Turner,* Buller's N. P. 129; *Atkins* v. *Hill,* Cowp. 284; *Barnes* v. *Hedley,* 2 Taunt. 184; *Lee* v. *Muggeridge,* 5 Taunt. *36. Not long after Lord Mansfield's death serious questions were raised as to how far moral consideration should be recognized. In a learned note to *Wennal* v. *Adney,* 3 B. & P. 249 (1804), the cases were examined and the following stated as the proper rule: "An express promise, therefore, as it should seem, can only revive a precedent good consideration, which might have been enforced at law through the medium of an implied promise, had it not been suspended by some positive rule of law, but can give no original right of action, if the obligation on which it is founded never could have been enforced at law, though not barred by any legal maxim or statute provision." In 1831, in *Littlefield* v. *Shee,* 2 B. & Ad. 811, Lord Tenterden expressed doubts as to the Mansfield doctrine, and in *Eastwood* v. *Kenyon,* 11 Ad. & El. 438 (1840), the above quoted rule from the note to *Wennal* v. *Adney* was approved. This is the English view today. See WILLISTON ON CONTRACTS, § 147; LEAKE ON CONTRACTS [6th ed.], 443. In truth, it would seem, as said by Parker, C. J., in *Mills* v. *Wyman,* 3 Pick. 207, that wherever a man has deliberately made a promise he is *morally* obligated to perform. In general, the American courts follow about the same rule as applied in *Eastwood* v. *Kenyon.* See, for example, *Mills* v. *Wyman, supra; Lyell* v. *Walbach,* 113 Md. 524, 33 L. R. A. (N. S.) 741. However, in a few jurisdictions there apparently is a disposition to adhere to the broader view of Lord Mansfield. See *Davis* v. *Morgan,* 107 Ga. 504, applying a statute; *Sutch's Estate,* 201 Pa. 305. The principal case indicates that in Michigan that view is well received, particularly since contracts not complying with the statute there involved are treated as really *void. Scott* v. *Bush,* 26 Mich. 418.

CONTRACTS—VOID AS STIFLING COMPETITION.—Plaintiff and defendant attended a British government auction, and to avoid competition an agreement was made for defendant to bid on their joint account and that whatever he purchased should be divided equally, each paying one-half the purchase money. After the sale defendant repudiated the contract. *Held,* the agreement is unenforceable as being against public policy, at all events where the goods so sold are the property of the public. *Rawlings* v. *General Trading Co.,* [1920] 3 K. B. 30.

WILLISTON ON CONTRACTS, Vol. III, Sec. 1663, states that in cases of this type the United States authorities regard the contract as void, while in England the contrary view is held. The court in the principal case, in referring to the former English decisions, states that equity has taken a different view than the common law, discussing *In re Carew's Estate,* 26 Beav. 187, in which a sale by the court was not set aside, although the two bidders agreed not to bid against each other, but that one should bid up to £1500 and divide the lot between them. They bought it for £650, and the court held that this agreement furnished no ground for opening the bidding or annulling the sale, as there was no fraud, for the reserved price was put at £600. In *Galton* v. *Emus,* 1 Coll. 243, the vice chancellor held that an agreement between two persons who are desirous of purchasing an estate advertised for sale by auction, that one of them shall not bid against the other, is not illegal. In *Levi* v. *Levi,* 6 Car. & P. 239, cited to support the principal case, the jury were directed that an agreement between brokers for stifling competition was an indictable conspiracy. In the United States the courts have disposed of this problem much more effectively. 20 L. R. A. 545, note. In *Doolin* v. *Ward,* 6 Johns. Rep. 194, the Supreme Court of New York decided that such an agreement was void and against public policy as tending injuriously to affect the character and value of sales at auction. The point was decided similarly in *Ralphsnyder* v. *Shaw,* 45 W. Va. 680. The case of *Phippen* v. *Stickney,* 3 Met. (Mass.) 384, points out the true principle by ruling that "an agreement by two or more persons that one of them only will bid at an auction of property, and will become the purchaser for the benefit of them all, is illegal if it is made for the purpose of preventing competition at the bidding and depressing the price of the property below the fair market value. Otherwise, if the purpose of the agreement be to enable each of the parties to become a purchaser, when he desires a part of the property offered for sale and not the whole lot; or if the agreement be made for any other honest and reasonable purpose." The test as applied in *Fisher* v. *Transportation Co.,* 136 Mich. 218, is that "where the circumstances show that the consideration for the promise is in whole or in part an attempt to prevent competition at a public sale, the contract is void," and it would seem as though its application would effectually support the conclusion of the English court and point out the distinction in the cases discussed.

CRIMINAL LAW—POST-DATED CHECKS WITHOUT FUNDS.—A statute provided that the issuance of a check or draft on any bank without authority, when there were insufficient funds to cover the same, should be punishable by fine. D issued a post-dated check without authority or funds and was prosecuted under the statute. *Held,* the statute was not applicable to the execution of a post-dated check. *Smith* v. *State* (Ark., 1921), 226 S. W. 531.

The only question in the case was whether a post-dated check came within the provision "check or draft." The word "check" has generally been held to mean drafts payable presently upon a bank; while the word "draft" includes instruments payable at a future date. Thus, it would seem